

The complaint

Mr B complains that Financial Administration Services Limited (trading as Fidelity) has acted unfairly in arranging the sale of some of his pension investments without his agreement.

What happened

I issued a provisional decision on this complaint in December 2022. In that decision I explained why I thought part of the complaint should be upheld and what Fidelity needed to do in order to put things right. Both parties have received a copy of the provisional decision but, for completeness and so those findings form part of this decision, I include some extracts from it below. In my decision I said;

Mr B holds pension savings with Fidelity. In March 2021 he informed Fidelity that he wished to transfer some of his pension investments to another provider that I will call "V". He initially asked whether those investments could be transferred in-specie. But Fidelity told Mr B that would not be possible, and so he placed instructions for the sale of those investments, so he could arrange the transfer of the cash proceeds.

Mr B placed his sale instructions on 16 March 2021. And V then sent a request to Fidelity, via the automated Origo Options system, for the transfer of the cash proceeds of that sale. The requested transfer was for £9,619.54.

But on receipt of the transfer request Fidelity failed to identify the sale that had been instructed by Mr B – and had not yet settled. So in order to raise sufficient funds to allow the transfer Fidelity instructed the sale of some other investments that Mr B held within his pension plan.

When that mistake had been identified, Mr B agreed with Fidelity that he would repurchase the assets that had been sold in error. Fidelity has shown that the sale and repurchase transactions resulted in a small gain to Mr B. It paid Mr B some compensation for the inconvenience he'd been caused and refunded the stamp duty and dealing fees that Mr B had been charged. The transfer to V was completed on 7 April when the requested funds were transferred.

But, around a week later, V sent a new transfer request to Fidelity, again via the Origo system. That request said that Mr B had now asked that a transfer amounting to £16,938.92 be completed. Fidelity responded to V to confirm that it had already completed the original transfer request, and any additional funds would need to be requested via a new instruction. V sent Fidelity a request for the transfer of £7,319.38 on 12 April.

Mr B didn't hold sufficient cash in his pension savings to support that transfer request. So Fidelity instructed the proportionate sale of some of Mr B's pension investments. It sent the further transfer amount to V on 15 April, and confirmed the transfer had been completed to Mr B a couple of days later.

Mr B says that the second transfer request was an error. He says that as part of the resolution of his complaint about the first transfer, he'd instructed Fidelity that it shouldn't sell any of his pension investments without his agreement. He says that Fidelity should have identified that the second request was a mistake and rejected it.

Fidelity looked into Mr B's further complaint. It accepted that it failed to communicate with him effectively about the outcome of its investigations. So it offered him a further £50 for the inconvenience he'd been caused. But it didn't agree that it had been wrong to make the second transfer to V, funded by the sale of some of Mr B's pension investments. Unhappy with that response Mr B brought his complaint to this Service.

There are two separate (but similar) actions that have led to Mr B making his complaint. So I think it right that I should deal with each in turn. It is clear that Mr B feels that the two errors are directly linked, and that Fidelity failed to apply any lessons learnt at the time of the first transfer to what happened later. And, as I'll go on to explain, I currently agree that Fidelity hasn't treated Mr B fairly.

There were two regulated firms that had an involvement in Mr B's transfer. Fidelity held Mr B's pension savings, and so needed to transfer them to V. V was the recipient of the transfer. But V was responsible for acting on Mr B's behalf in making the request of Fidelity, and directing the value of the transfer.

And I think it is important that I should reflect a little more on how the transfer process needed to run. It was for V to request the transfer and deal with Fidelity on Mr B's behalf. Generally it wasn't appropriate for Fidelity to be instructed by Mr B since taking instructions in that way might mean that it transferred assets to V, that it was unable to accept. So Mr B was reliant on V to implement the transfer activity on his behalf.

This complaint though only deals with the actions of Fidelity. So in my decision I will not be making any findings about the involvement of the other firm – V. Whilst it might be necessary for me to refer to the actions that firm took in progressing the transfer I do so without any finding of fault. That is only something that would be considered should Mr B make a complaint about that firm.

When Mr B first asked Fidelity to make the transfer, he had hoped that it could be completed "in-specie". That would mean that the pension investments he held would be transferred directly to V without them needing to be sold first. Fidelity explained that it wasn't able to offer a transfer on those terms, and so Mr B decided to sell those investments and transfer the cash instead.

Fidelity accepts that it failed to identify that Mr B had instructed that sale when it initially received the transfer request from V. So, in order to satisfy the transfer request, it needed to generate sufficient cash from Mr B's existing pension investments. That was clearly an error, and resulted in the sale of pension investments that Mr B wished to retain. But I can see that shortly afterwards, with Fidelity's agreement, Mr B repurchased those investments and so corrected the error that Fidelity had made. The information I have seen shows that Mr B wasn't financially disadvantaged by the error. The investments were repurchased at a lower cost than the sale proceeds, and Fidelity refunded the stamp duty and dealing costs that Mr B had paid. So I don't think there is anything further that needs to be done in relation to the initial transfer request.

Shortly after the first transfer had been completed, Fidelity received an updated transfer request from V. I cannot see that Fidelity had any reason to doubt that instruction was a correct reflection of Mr B's intentions, although I entirely accept that Mr B says that wasn't the case. I don't know why V made a request that Mr B says he had authorised, but as I've explained above that isn't something that I should consider here. I think it sufficient to simply conclude that, for whatever reason, V provided Fidelity with what appeared to be a valid instruction, and it was reasonable for Fidelity to act on the request that had been made.

But I think it would be appropriate now to reflect on the terms and conditions that are applicable to the pension savings that Mr B held with Fidelity. I asked Fidelity to provide me with the relevant sections of the terms and conditions that allowed it to make a proportionate sale of some of Mr B's pension investments to provide the funds to meet the transfer request.

Fidelity has said that there is little in the terms and conditions relating to transfers to another pension provider. But it has highlighted what it thinks are the applicable terms. In respect of this complaint I think the key conditions are Sections 19(d) and 19(e). Those say;

(d) If you ask us to transfer part of your account(s), you must tell us which investments we should sell to make the Transfer Payment.....

(e) We will need time to make sure that we comply with the requirements on transfers in the Rules and we will be unable to make a transfer until we've sold the assets that we need to sell to provide the Transfer Payment.

Here I think it is clear that V (albeit the second request was potentially in error) only asked Fidelity to transfer part of Mr B's remaining pension investments. So it seems to me that, before the transfer took place, Mr B needed to tell Fidelity which investments it should sell to raise the necessary cash funds. That clearly did not take place, since Mr B says he was unaware that the additional transfer had been requested.

At the very least I think Fidelity should have made contact with Mr B in order to seek his instructions regarding the additional transfer. Had it done so I think it likely that Mr B would have identified that the additional request had been made in error, and the proportionate sales would have been prevented.

So, in line with the terms, I don't think it was reasonable here for Fidelity to take the steps it did in order to satisfy the transfer request that it had received from Fidelity. I note that, additionally, Mr B had previously told Fidelity it should not be selling his pension investments without his authority. I don't think the transfer request from V provided Fidelity with Mr B's authority to override that instruction. So although Fidelity needed to take steps to realise sufficient cash funds to cover the transfer request, in line with its terms and conditions it should only have done that after consulting Mr B.

The events that form the subject of this complaint took place more than 18 months ago. So putting things right will be complicated. When the error was first identified it might have been possible for Mr B to ask V to return the incorrect transfer to Fidelity. And so he could have reinvested his pension savings to correct the error in the same way he had previously done when the first unauthorised sale had taken place. But given what had transpired over the previous month, I can understand why Mr B might have been reluctant to take that approach.

Mr B has explained that there were two of the investments that he was particularly disappointed about being sold – holdings in BP and in BHP Group. He says that he wasn't able to hold those particular investments on the platform provided by V. And he says those investments were sold at a time that they were beginning to recover from previous poor performance.

I appreciate that there were also other assets sold by Fidelity as part of its proportional sale activities. But Mr B hasn't told us that those sales have resulted in the loss of future profits. Given that all the funds Fidelity disinvested for the second transfer were available to Mr B to make alternative investments with V I am satisfied that it would be reasonable to consider any losses on those funds to be offset by potential investment gains once the funds were invested with V. And, for similar reasons, I don't intend to make any direction that interest should be paid on the investment losses.

Mr B has told us that his intention was to sell his holdings in BP once they reached a price of £4. And he says his target sale price for BHP was £25. I am satisfied that those prices haven't been derived with hindsight – I can see that since 2021 both stocks have reached higher prices than those Mr B says were his target. I think it reasonable that I direct Fidelity to pay compensation to Mr B for the difference between his target sale price, and the price Fidelity realised when it sold the assets without Mr B's permission.

There is no doubt that this matter will have caused distress and inconvenience to Mr B. The error that Fidelity made at the time of the original transfer, that was corrected by Mr B, was repeated just a few weeks later. I have seen that Fidelity offered Mr B £50 in regard of its handling of this aspect of his complaint. I don't think that is sufficient. So I intend to direct Fidelity to instead pay a further sum of £300 to Mr B for his inconvenience.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Fidelity says that it accepts my provisional decision. Mr B hasn't provided any comments about my findings. But he has said that he disagrees with how I've said Fidelity should put things right. Although I am only summarising here what Mr B has said, I want to reassure him that I have read, and carefully considered, his entire response.

Mr B says that it is easily possible for Fidelity to reinstate the investments it sold without his permission. He says that would provide a more straightforward means of putting things right. He says that the figures I quoted in my provisional decision were not target selling prices, just points at which he considered he would have recovered his losses. He says that when he saw the recovery of those investments his sentiment would most likely have changed to retention of the shares.

Mr B says that his preference was originally for the transfer to take place in-specie. And he says that V would have facilitated that option. But Fidelity refused that approach. Mr B thinks it was to make any transfer unattractive, and he noted that Fidelity would have earned dealing fees when his investments were sold.

Mr B has said that the compensation I have proposed for his inconvenience is insufficient. He says he has needed to spend a considerable amount of time dealing with Fidelity, and this Service, and has been unable to perform paid work as a result. He thinks that the income he has lost, including not receiving dividends from the shares, amounts to £2,000.

Mr B has also questioned the income tax implications of any compensation that he receives. He thinks it is for him, not Fidelity, to manage his personal tax affairs, and make the appropriate declarations to HMRC.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr B and by Fidelity. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

Fidelity has accepted that it has failed to follow its terms and conditions when dealing with Mr B's pension savings. So I do not need to revisit any further what happened. What remains outstanding for me to now decide is what Fidelity should do in order to put things right.

Mr B first brought his complaint to us in October 2021. That was a number of months after Fidelity had sold some of his pension investments without his agreement. I can see that in the months leading up to us receiving Mr B's complaint he had attempted to mediate a resolution with Fidelity, including a proposal of him providing sufficient funds within his SIPP for Fidelity to reverse the sale of the BHP and BP shares. But, since at that time it didn't consider it had done anything wrong, Fidelity rejected Mr B's proposals.

In his response to my provisional decision, that same approach is what Mr B has asked me to follow. But I don't think that would provide a fair outcome. In the time immediately following the error, it might have been reasonable for Fidelity to be asked to repurchase the shares it had sold. But I think when it became clear that wasn't a resolution Fidelity was willing to follow, Mr B had the opportunity to mitigate some of his losses by repurchasing the relevant shares himself. I think now, with the benefit of hindsight, the attractiveness of continuing to hold those shares is apparent. I'm not persuaded that would have been the case around the time Mr B made his complaint.

In my provisional decision I asked Fidelity to pay Mr B compensation based on the share prices he had described to us as being his initial targets. Whilst I entirely accept that, when the shares reached that price, Mr B might have decided to continue to hold them, that again is now only a conclusion that can be confirmed with the benefit of knowing the subsequent price movements. The prices that I used as the basis for my compensation were significantly higher than those applicable at the time Mr B brought his complaint to us.

So, on balance, I still think the redress I directed in my provisional decision is fair for both parties. There is no doubt that Fidelity acted improperly by selling Mr B's shares without his agreement. But I think that Mr B had ample opportunity to mitigate some of that error by repurchasing most, if not all, of the investments that Fidelity had sold in error.

Generally it isn't appropriate for me to make a direct award for income that has been lost whilst dealing with a complaint. Our process is designed to be straightforward and act as an informal alternative to Court proceedings. It is natural that dealing with any complaint will take some time on behalf of a consumer. But I don't think it would be reasonable to expect a firm to meet those costs.

I think that the payment I have directed Fidelity to pay for Mr B's inconvenience is reasonable and in line with awards that have been made in similar circumstances. I'm not

minded that I should ask Fidelity to pay more than the £300 I set out in my provisional decision for Mr B's inconvenience.

My understanding is that the compensation I am awarding to Mr B isn't taxable as income. Should the compensation be paid into his SIPP, it will be considered to be an augmentation. And, as I set out below, should that not be possible, it could be paid directly to Mr B. But that payment should rightly be reduced by a notional amount to reflect the fact that it would in the future have provided Mr B with a taxable income. But to be clear, that tax deduction is purely notional. It will not result in Fidelity paying any tax to HMRC, and so it would not be possible for any tax deducted to be reclaimed by Mr B. But, nor would the payment of compensation need to be declared as income.

I understand that this decision will be, in part, disappointing for Mr B and that he thinks a higher level of compensation is appropriate. But I am satisfied that the compensation I set out in my provisional decision, and that I repeat below, is fair in all the circumstances of this complaint.

Putting things right

I think Fidelity should pay compensation to Mr B to reflect the difference between the sale prices I set out above (BP - £4 and BHP - £25), and the price Fidelity realised when it sold the investments in BP and BHP Group without Mr B's permission.

I can see that Fidelity sold 41 BHP shares at a price of £21.3007. And it sold 613 BP shares at a price of £2.9569. So I think Fidelity needs to pay compensation to Mr B amounting to £791.09.

The compensation should be paid into Mr B's SIPP. The amount paid should allow for the effect of charges and any available tax relief. Compensation should not be paid into the pension plan if it would conflict with any existing protection or allowance.

If Fidelity is unable to pay the total amount into Mr B's SIPP, it should pay that amount direct to him. But had it been possible to pay into the plan, it would have provided a taxable income. Therefore the total amount should be reduced to notionally allow for any income tax that would otherwise have been paid.

The notional allowance should be calculated using Mr B's actual or expected marginal rate of tax at his selected retirement age. I think it's reasonable to assume that Mr B is likely to be a basic rate taxpayer at the selected retirement age, so the reduction would equal 20%. However, as Mr B would have been able to take a tax-free lump sum, the reduction should be applied to 75% of the compensation, resulting in an overall reduction of 15%.

Fidelity should also pay Mr B a further sum of £300 to reflect the inconvenience he has been caused.

My final decision

My final decision is that I uphold part of Mr B's complaint and direct Financial Administration Services Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 March 2023.

Paul Reilly

Ombudsman